

Child Abuse Reporting - A Dilemma Fully Explored

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NOTE: This article was first published on the CPH website in September of 2013. It appears below with minor changes. Child abuse reporting responsibilities are a critical part of a mental health practitioner's practice. A decision to report or not report can have significant consequences for the reporting practitioner, the patient, the therapeutic relationship, and others who may be affected by the decision - likewise when there is a failure to recognize that a report is required to be made. This article presents a scenario that is not uncommon for those who are supervisors of pre-licensed persons.

CHILD ABUSE REPORTING - A Dilemma Fully Explored

While I have previously written about this topic, I was asked to comment on the topic again - that is, the situation where a pre-licensed associate, intern, trainee or other-titled supervisee fails to timely report child abuse and then discovers this failure to comply with the law when receiving supervision. What is the dilemma created for the pre-licensed person, and what is the dilemma created for the supervisor? What are some of the legal issues involved?

Suppose that the pre-licensed person is properly employed and supervised by a licensed practitioner in a private practice, or is employed in a nonprofit agency and is properly supervised by an employee of the agency. A seventeen year-old patient is seen by the pre-licensed person on a Monday. The patient reveals that five years ago, when she was twelve, she was sexually molested (touched inappropriately) by her father. This happened twice, but never again, according to the patient. The patient mentioned this when describing her current relationship with her parents. When the pre-licensed person inquired further into the events of five years ago, the patient told the supervisee that she did not want this reported to the authorities because it would cause great harm to the family and to the father in particular, a prominent attorney. The girl was fearful that she would be blamed for causing so much pain to the family.

The supervisee reasonably believed that the patient was in no immediate danger and awaited supervision on Thursday morning in order to discuss the matter. Additionally, the supervisee was not certain that this should or must be reported because of the passage of five years and because of the girl's fear of being blamed. During supervision, the supervisee learned that this information needed to be reported because the supervisee had, or should have had, a reasonable suspicion that reportable child abuse had occurred. The supervisee also is reminded that under the applicable state law, the child

abuse report was supposed to be made as soon as practicably possible by telephone *and* within 36 hours in writing – both periods of time then having passed. The supervisee knew that she was a mandated reporter, and knew, or should have known, that failure to report child abuse within the time frame specified in law is a crime – a misdemeanor.

The licensed supervisor, also a mandated reporter, learned about the abuse for the first time in supervision and obviously learned about the abuse while acting in a professional capacity. The supervisee asks the supervisor what should now be done. The supervisor is not sure whether the supervisee should be told to now make the report, or whether the supervisor should make the report, or whether both should simultaneously make the report. My thoughts follow. While each state's laws regarding child abuse reporting vary, often in fine nuance, I explore the issues with California law in mind. How do the reporting laws in your state of practice compare or differ?

If the supervisee now reports the incident of child abuse, it would likely be determined that the report was not filed in a timely fashion. Technically, the supervisee's failure to timely report could be investigated and might result in the supervisee being charged with a crime and a licensing law violation. As a practical matter, if there has been no harm to the minor during the delay in reporting, an investigation and prosecution is hopefully unlikely. If the supervisor makes the report, the supervisor would be making the report *in* a timely manner, but would probably have to reveal, when describing the situation, that the supervisee knew about this several days earlier.

Hopefully, the supervisor will be able to present the report *in* a manner that will minimize the jeopardy to the supervisee – that is, the supervisor might explain that the supervisee is not yet licensed and was, depending on the circumstances, relatively inexperienced, that the supervisee brought the issues up in the first supervision session since learning of the information, that the supervisee competently evaluated the present threat to the seventeen year-old, and that the supervisee has learned from the experience. While this is no guarantee against trouble for the supervisee, the possibility of trouble should be minimized. Of course, if harm did take place during the delay in making a timely report, criminal charges become more likely- with increased implications for disciplinary action by the licensing board.

Several other points are useful to make. First, in California and I suspect in most states, there is no statute of limitations on the *reporting* of child abuse. What is meant by that statement is that if the victim of the abuse is a child (under 18) for purposes of the reporting law, then even if the abuse took place many years earlier, a report would still be required. While a criminal prosecution of the perpetrator might at times be barred by a statute of limitations, a report would nevertheless be required. There is ordinarily no need to report the situation involving an adult patient who talks of abuse suffered as a child. An exception to this general rule might occur where, for example, an eighteen year old patient describes recent and previous sexual abuse by her father and expresses concern for her sixteen year-old sister residing in the house. The therapist in that situation might justifiably have a reasonable suspicion that child abuse is now occurring.

Even though circumstances may exist that make the therapist believe that a report is not necessary or might be counter-productive to the patient and the family, practitioners cannot substitute their judgment for the requirements of the law. I remember the therapist in California who had his license suspended for a period of years for a failure to report child abuse. He had determined that a report would not be wise under the circumstances, and that it might be counter-productive to the therapy. During an administrative hearing held in order for him to get his license back, he was asked by the Deputy Attorney General representing the State licensing board whether he would act differently in the future if the same circumstances were to occur. Instead of saying that he would always obey the child abuse reporting law, he indicated that he would do the same thing as he did in the instance that led to the disciplinary action. His license was not restored.

In California, when two or more persons who are required to report jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. If a member of the team has knowledge that the member designated to report has failed to do so, then that member must thereafter make the report. This statute typically applies to situations where both mandated reporters find out about the suspected abuse at the same time. This statute can arguably be read as having application to the situation described in this article. In most cases, the supervisor will want to report the suspected abuse in a timely manner and there is ordinarily no need for the supervisee to file a separate, duplicate, and late report.